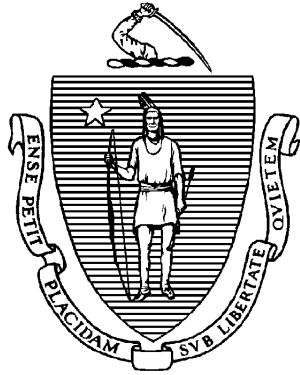


Massachusetts Water Pollution Abatement Trust
Office of the Treasurer and Receiver-General
Executive Office for Administration and Finance
Department of Environmental Protection



Application for Financial Assistance
Clean Water State Revolving Fund
Construction Stage

May 2013

Department of Environmental Protection
Bureau of Resource Protection
One Winter Street
Boston, Massachusetts 02108-4747

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Introduction

Chapter 275 of the Acts of 1989, as amended by Chapter 203 of the Acts of 1992, (the Act) established the state revolving fund program in Massachusetts contemplated by Title VI of the Clean Water Act (CWA) and created the Massachusetts Water Pollution Abatement Trust (the Trust) to implement the program. The Trust is authorized under the Act to make loans to local governmental units to finance the costs of eligible water pollution abatement projects. In order to receive a loan, a potential borrower must file an Application for Financial Assistance with the Massachusetts Department of Environmental Protection (MassDEP), Bureau of Resource Protection (BRP). Once MassDEP has approved the Application, it will forward a Project Approval Certificate to the Trust. The Trust will then be authorized to fund the loan, subject to the availability of funds and subject to review by MassDEP and the Trust of financial information contained in the Application and development of terms and conditions for the loan.

Eligible projects will be determined in accordance with the priority lists established annually by MassDEP. ***A project must appear on the current MassDEP Intended Use Plan project listing to be eligible to apply for financial assistance.*** Applications for loans will be reviewed in accordance with the provisions of 310 CMR 44.00 found at <http://mass.gov/dep/service/regulations/310cmr44.pdf>.

This package includes the Application Forms, Instructions and other information relative to supporting documentation required to be submitted as part of the Application. Do not submit the instructions with the Application. Applicants should note that neither the filing of an Application nor issuance by MassDEP of a Project Approval Certificate constitutes a binding commitment of the Trust or MassDEP to make a loan. Binding commitments, subject to the availability of funds, will be issued by the Trust after review of the financial information contained in the Application.

Changes for 2013

There are no major changes for 2013. Changes from the previous year that continue into 2013 include:

Certain nutrient removal projects are eligible for 0% interest rate loans. Appendix J includes important information regarding the implementation of the 0% loan program.

Davis Bacon Wage Rates are again required for 2013. The required Davis Bacon contract language may be found in the Plans and Specifications package at <http://www.mass.gov/dep/water/approvals/pspkg.pdf> .

Certain renewable energy projects and projects in Environmental Justice communities are eligible to receive principle forgiveness. Projects eligible to receive principle forgiveness must have signed construction contracts by April 1, 2014.

The changes to the Disadvantaged Business Enterprise (DBE) package submission requirements continue this year. DBE packages no longer have to be submitted with the bid. The two low bidders must submit DBE packages to the awarding authority within three days of bid opening. The details of this change are found in the Plans and Specifications package at <http://www.mass.gov/dep/water/approvals/pspkg.pdf>

Loan Application Submission Requirements – As with previous years, MassDEP is requesting that applicants submit one paper copy and one PDF copy of the Loan Application. In an effort to reduce the amount of paper submitted, applicants may submit a ½ size set of plans rather than full size ones.

PLEASE NOTE THAT THIS APPLICATION PACKAGE IS SUBJECT TO REVISION. IT DOES, HOWEVER, REFLECT THE BEST CURRENT INFORMATION ANTICIPATED TO BE NEEDED BY MassDEP AND THE TRUST TO REVIEW AND APPROVE YOUR PROJECT. PLEASE CONTACT MassDEP PRIOR TO SUBMISSION OF THIS APPLICATION.

General Information

Please complete all parts of this application; incomplete or incorrect applications may delay review.

1. *Use of This Application* - This is an application form for financial assistance from the Massachusetts Water Pollution Abatement Trust's State Revolving Fund (SRF) Loan Program. This form is to request subsidized loan assistance and/or to request refinancing of debt obligations incurred by the local governmental unit (LGU) for the construction of water pollution abatement projects. LGUs interested in receiving an SRF loan must complete and return this application.
2. *General Eligibility* - A project must meet the eligibility criteria of the SRF program in order to be eligible for financial assistance under the SRF program. SRF eligibility criteria can be found at 310 CMR 44.04 and 44.07 (<http://mass.gov/dep/service/regulations/310cmr44.pdf>) and in MassDEP's Policy on Eligible Project Costs (<http://www.mass.gov/dep/water/laws/cwsrfpol.pdf>).
3. *Deadlines* - Please keep in mind three important deadlines. A vote on the local appropriation by the City Council, Town Meeting or Wastewater District must be completed by June 30, 2013 and should be scheduled as far in advance of that date as possible. A complete application must be submitted by October 15, 2013. Construction must commence within 6 months of issuance of the Project Approval Certificate by MassDEP (this usually means by June 30, 2014). For projects receiving principal forgiveness, construction contracts must be executed by April 1, 2014.
4. *The Application Consists of Three Parts and a Checklist:*

Part I - General information about the applicant and the project, and an applicant certification statement.

Part II - Project specific and environmental benefit data with supporting documentation.

Part III - Supplemental Requirements.

Loan Application Checklist - The checklist must be completed and submitted with the application. MassDEP recommends that the application be assembled in a 3-ring binder, with inserts for each of the applicable items.

5. Please refer to the instructions for each section to determine which types of additional information are required for submission with the application. MassDEP may require other supporting information or documentation in addition to that requested in this application.
6. *Plans and Specifications* - Plans and specifications may be submitted prior to submitting the other parts of the application. Early submittal will help expedite MassDEP's review of the project. In any event, plans and specifications must be submitted no later than the application due date, and the loan application is not complete until they have been submitted.
7. *Submission* - Please submit an original signed application (**including the loan application checklist**) and one PDF copy of the application to:

Steven McCurdy, Director
Division of Municipal Services
Massachusetts Department of Environmental Protection
One Winter Street, 5th Floor
Boston, Massachusetts 02108-4747
(617) 292-5779

Instructions for Part I - Applicant Information Section

1. Provide the legal name of the eligible borrower (local governmental unit) that will undertake the proposed project. If the applicant is not a municipality provide information regarding the entity that will be responsible for executing contracts and documents.

List the applicant's Department of Revenue (DOR) identification Number (this is the I.D. number used on all state revenue aid programs).

List the applicant's Federal Employer Identification Number (FEIN).

Authorized Representative - (*Checklist Items 3 and 4*) List the name, title, complete address, e-mail address, and telephone and fax numbers of the authorized representative. The application must contain a resolution or authorization designating by title the official (Mayor, City or Town Manager, Chairman of the Board of Sewer Commissioners, Chairman of the Board of Selectmen, etc.) to act as the representative of the applicant to sign for, accept, and take whatever action is necessary relative to the project. In the city form of government, the City Council will generally name the authorized representative. If the community is governed by Town Meeting, then the Town Meeting action will name the appropriate group, such as the Board of Selectmen or Board of Public Works. The appropriate governing body will then name the authorized representative. If the authority to file statement names an office, then a certified statement is required specifically identifying the individual currently holding that office. For wastewater districts, provide the requisite authorization of the governing board.

The Authority to File statement must be certified. This is accomplished by either a certification at the bottom of the authority to file or by submitting a separate certifying statement. Suggested forms for Authority to File and Certifying Authority to File are included in **Appendix A**.

In the event the authorized official is replaced while the project is still active, a certified statement naming the new incumbent and the effective date of appointment must be submitted. It is for this reason that it is recommended the Authority to File name only an office or position (Mayor, City or Town Manager, Chairman of the Board of Water Commissioners, Chairman of the Board of Selectmen, etc) so when there is a change in the Authorized Representative, only a new Certifying Authority to File needs to be submitted.

On occasion an authorized representative may desire to delegate to another person the authority to also act on their behalf in processing paperwork during the implementation of the project. This is accomplished by having the authorized representative submitting a letter advising of this delegation.

2. If an individual other than the Authorized Representative will serve as the Applicant's contact person for day-to-day management of the project, provide that person's name, address, e-mail address, and telephone and fax numbers.
3. Provide the name and Federal Employer Identification Number (FEIN) of the engineering firm, contact person, address, e-mail address, and telephone and fax numbers.
4. List the project's ID number and name from the current CWSRF Priority List/Intended Use Plan, and provide a brief description of the planned project. The description should include, as applicable, information such as the size and type of wastewater treatment plant(s), the size of pumping station(s), size and length of sanitary sewers and force mains, description of rehabilitation of sewers, type of non-point source abatement project, whether the project is part of a phased project, and whether the project is required by enforcement action.
5. If the project is serving more than one municipality, list all municipalities involved and any NPDES permit numbers, as applicable.
6. Indicate the amount of financial assistance you are requesting.

7. **Local Appropriation** - (*Checklist Item 5*) The applicant must demonstrate that sufficient funds are available to cover the total (both eligible and ineligible) project costs. This is accomplished by means of a vote of Town Meeting, City Council, Wastewater District, or other appropriate action. Forms are included in **Appendix B**, which provide suggested language depending on whether the applicant uses general obligation or revenue obligation borrowing. Local bond counsel should be consulted for exact language.

Important points to remember include:

- a. Note that the applicant can borrow from the Massachusetts Water Pollution Abatement Trust in accordance with Chapter 29C, as amended, of the General Laws.
 - b. The resolution must be certified.
 - c. It must denote who can act on behalf of the applicant to file for and accept financing.
 - d. It must specifically state what project or type of project is being authorized, such as treatment plant, pumping station, sewers, etc.
8. Check **ALL** forms of financial assistance the applicant is requesting.
9. The application certification must be signed by the authorized representative designated in item 1. ***Please review carefully the 13 conditions with which construction projects financed through the SRF must comply.*** Failure to meet these conditions may preclude MassDEP's approval of the project.
10. Describe the environmental/public health benefits of the project. Examples include significantly contributing to efforts to reopen closed shellfish beds, significantly contributing to efforts to eliminate beach closures, significantly contributing to remove water bodies from the 303d list of impaired waters, etc.

Instructions for Part II - Project Section

1. **PLANS & SPECIFICATIONS** - One copy of the final engineering plans and specifications for each contract should be submitted as soon as possible, but no later than the date the application is submitted. *Plans and specifications must be consistent with the MassDEP "Guidelines for the Preparation of Plans and Specifications", and a completed copy of the Plans & Specifications Checklist contained in the Guidelines must be included with the submittal.* These documents may be found on the MassDEP web site at <http://mass.gov/dep/water/approvals/pspkg.pdf>. The comments of all other interested parties, such as MassDEP regional offices, are to be incorporated into the documents. Applicants are encouraged to submit final plans and specifications as early as possible to the same address noted on page 2. In an effort to reduce the amount of paper used, a 1/2 size set of plans may be submitted in lieu of a full size set.
2. **DETAILED PROJECT SCHEDULE** - The application must contain a realistic schedule with cash flow outlining important milestones in the construction program, including bidding requirements. Since the Trust will sell its bonds based on the proposed schedules, it is critical that the schedule and cash flow be as accurate as possible. Please include month, day, and year.
3. **SUMMARY OF COSTS** - Provide detailed construction bid sheets from the specifications showing the engineer's estimate of construction cost, including eligibility. Eligibility must be consistent with the MassDEP "Policy on Eligible Project Costs" (<http://mass.gov/dep/water/laws/cwsrfpol.pdf>). Please note that a contingency of 10% of the estimated construction contract cost should be included in the estimate prior to receiving bids. The contingency will be reduced to 5% when based on actual bid amounts.

If the project includes costs for police details, provide an explanation of the need and submit a traffic management plan that includes a detailed breakdown of the man-hour requirements to implement. The traffic management plan should be developed in conjunction with the local community's traffic management officer. MassDEP reserves the right to require that the traffic management plan be

certified by the appropriate police official should the estimated needs appear to be excessive. (Note that costs for police details are considered an administrative cost of the LGU, and are not to be included in the construction contract.).

In addition to the above requirements for police details, the LGU is required to comply with 701 CMR 7.00 Use of Road Flaggers and Police Details on Public Works Projects. These regulations identify when road flaggers or police details shall be used and also require the preparation of a construction zone safety plan. The regulations and other guidelines can be found on the massDOT web site at <http://www.massdot.state.ma.us/portals/8/docs/flaggers/FlaggerGuidelines.pdf>. Both police details and road flaggers are eligible costs within the SRF program.

4. **ENVIRONMENTAL BENEFITS** - The General Accountability Office (GAO) and the EPA require reporting of the anticipated environmental benefits of SRF funded projects. Please complete the checklist in Part II by providing the following information:
- a. Permit Type - For most projects, this field will be NPDES permit. Other permits may include groundwater or land application permits. If no permit is required, please indicate No Permit in the box.
 - b. Permit Number - Enter the NPDES or other permit number in this field.
 - c. Population Served by the Project - Enter the number of people that the project serves directly. For example, if a project extends sewer lines to a neighborhood that was formerly on septic, only report the population of that neighborhood directly served by the project. If a project is an upgrade of a treatment plant, enter the entire population served by that treatment plant.
 - d. Population Served by the System - Enter the entire population served by the permitted facility or system. For example, on a sewer extension project, enter the entire population served by the wastewater treatment plant. For treatment plant upgrades, the population served by the project and by the system will often be the same number.
 - e. Wastewater Volume for the Project - Enter the average daily flow that the project directly affects. For example, if a treatment plant's capacity is being increased from 3.4 mgd to 5.2 mgd (without otherwise being upgraded), enter 1.8 mgd in the field. If a treatment plant is being upgraded, report the entire average daily flow of the plant. For CSO and SSO projects, flow data does not need to be entered due to the extreme variability of the flow.
 - f. Wastewater Volume for the System - Enter the total average daily flow for the permitted facility or system. For example, if a community has two wastewater treatment plants and one is being upgraded, enter the combined flow for the two plants.
 - g. Discharge Affected - Enter the type(s) of waterbody(ies) that the project affects the discharge to. Choose the "Eliminates Discharge" option when the project removes a discharge from the receiving waterbody; e.g., rerouting flow to another treatment facility. Also indicate if the discharge is seasonal by checking the appropriate box.
 - h. Wastewater Treatment Works Categories - Check the appropriate box(es) and indicate what percent of the project's dollar cost goes towards each category. For example, if a project upgrades and add phosphorus removal to an existing secondary wastewater treatment plant and replaces an interceptor to the facility, enter the percent of the cost assigned to each of the three categories. Assume a total project cost of \$20,000,000 and the cost of the phosphorus removal is \$7,000,000, the secondary plant upgrade is \$11,000,000 and the interceptor rehabilitation is \$2,000,000. Check the "Secondary Treatment" box and enter 55%, check the "Advanced Treatment" box and enter 35%, and check the "Sewer System Rehabilitation" box and enter 10%.

- i. Primary Impacted Waterbody - Enter the name of the receiving waterbody that is primarily impacted by the discharge.
- j. Other Impacted Waterbody (if any) - If the discharge has an impact on any other waterbody, enter the name of that waterbody in this field. The affected waterbody is not always the receiving waterbody. In many cases, a downstream stream segment, river, lake, or reservoir has strict pollutant limits that drive projects on upstream tributaries.
- k. Project Contributes to Water Quality... - Check "Improvement" when a project reduces pollutant loading to the affected waterbody. Check "Maintenance" when a project simply sustains the treatment capacity of a facility. Check "Not Applicable" when the project increases pollutant loadings to the affected waterbody.
- l. Project Allows System to... - Check "Achieve Compliance" when the facility/system was out of compliance before the project and will be in compliance at project completion. Check "Maintain Compliance" when the facility/system was in compliance before the project and has a low risk of falling out of compliance after the project is complete. Check "Not Applicable" if the project has little or no impact on the compliance status of the facility such as a project that addresses a few I/I problems. Strictly speaking, these options do not give credit to projects that move the facility/system toward compliance but do not "Achieve Compliance" at project completion. If a project is a significant factor in a system/facility achieving compliance such as by accomplishing a specific group of items on a consent order or eliminating CSOs for a large section of the sewer system, checking the "Achieve Compliance" box is appropriate.
- m. Project Allows the System to Address... - Check "Existing TMDL" if one has been established for the receiving water. Check "Projected TMDL" if a TMDL is currently being developed for the receiving water. Check "Watershed Management Plan" if one has been developed for the receiving water.

Instructions for Part III - Supplemental Requirements (Items Nos. 6 through 29 on Checklist)

- 6. **LAND TITLE/EASEMENTS** - The applicant must demonstrate that all required land, easements, or real property have been obtained, bona fide options taken, or condemnation proceedings initiated. An attorney must prepare a document certifying the ownership or easement rights to all property. A sample form is included in **Appendix C**.
- 7. **INTEGRATED WATER RESOURCE MANAGEMENT PLAN (IWRMP)/COMPREHENSIVE WASTEWATER MANAGEMENT PLAN (CWMP)/ PROJECT EVALUATION REPORT (PER)** - Include a copy of MassDEP's letter approving the IWRMP, CWMP or PER. As provided by 310 CMR 44.08(3) (<http://mass.gov/dep/service/regulations/310cmr44.pdf>) every SRF project must be the result of an approved IWRMP, CWMP or PER. (A Sewer System Evaluation Survey (SSES) is a type of Project Evaluation Report.)
- 8./ 9. **WATER RESOURCES AND WASTEWATER PLANNING / LAND USE CERTIFICATIONS** - The applicant must demonstrate that the project is consistent with existing state, regional, and local water resource and wastewater planning requirements including but not limited to:
 - a. River Basin water quality management plans pursuant to the Clean Water Act s.303(e).
 - b. Non-point source management plans pursuant to the Clean Water Act s.319.
 - c. Estuaries management plans pursuant to the Clean Water Act s.320.
 - d. Local water resource management plans pursuant to the regulations of the Water Resources Commission.
 - e. Water emergency planning pursuant to M.G.L. c. 21G.

- f. The applicant shall certify that land use regulations, zoning, and other controls in place are consistent with the wastewater system service population projected in the applicant's facilities plan. Said certification shall list or otherwise identify the controls in place upon which it is based.

Sample forms are included in **Appendix D**.

10. INTERMUNICIPAL AGREEMENTS - If the project will serve two or more municipalities, or one municipality's project must connect to another's water system, the applicant must submit an executed Intermunicipal Agreement or another legally binding document covering financing, construction, and operation of the proposed treatment works. The requirement may be waived if:
 - a. Evidence of historic relationships for other services between the parties exist; or
 - b. The financial strength of the applicant is adequate to continue the project, even if one of the proposed communities fails to participate.
11. USER CHARGE SYSTEM - The applicant must have a user charge system in place that is adequate and is being enforced. If no user charge system has been put in place, it must be developed and in effect by the time the treatment works are placed in operation.
12. SEWER USE ORDINANCE - The applicant must have a sewer use ordinance in effect that it is adequate and being enforced. If no sewer use ordinance has been put in place, it must be developed and in effect by the time the treatment works are placed in operation. MassDEP has compiled most of the sewer use ordinances in the Commonwealth; therefore, the applicant does not need to submit the ordinance unless requested by MassDEP.
13. FEDERAL/STATE WASTEWATER DISCHARGE PERMIT(s) - Prior to the award of financial assistance, the applicant must obtain all state and/or federal discharge permits and approvals applicable to the proposed project.
14. SITE HEARING - In accordance with M.G.L. c.83, s.6, any proposal to construct a wastewater treatment plant and/or residuals facilities at a site not previously used for those purposes will require a site hearing to be conducted by MassDEP. This procedure does not apply to construction of sewers or pumping stations, but may apply if major modifications are proposed at an existing treatment site.
15. CONSTRUCTION PERMITS/ORDER OF CONDITIONS/CERTIFICATES/ LICENSES - If applicable, the following construction permits must be filed and documented in the loan application. For the purposes of awarding financial assistance, the application for the permit(s) is acceptable; however the final permit(s) must be incorporated into the specifications prior to MassDEP Permission to Advertise:
 - a. U.S. ARMY CORPS OF ENGINEERS (404 Permit) - An Army Corps of Engineers Section 404 Permit is required if a structure is to be located in, or if excavation, discharge of dredged or fill material will be performed in waters of the United States. For projects, this may involve the excavation and backfilling associated with lines crossing a waterway or wetland, outfall pipes, and any fill material (including rip-rap) used for bank stabilization or any fill associated with treatment facilities.
 - b. MassDEP PERMITS AND APPROVALS
 - (i) MA DIVISION OF WATERWAYS (Chapter 91 Permit) - A Chapter 91 Permit must be obtained for the construction of any structure or the filling of land, the driving of piles, or the making of excavations, in, over, or upon the waters below the high water mark of any tidal areas or in or over any great pond or any river or stream. In addition, a permit is also required if it is proposed to either dredge in the tidal areas or dispose of

any dredged material therein. For further guidance on this issue, please refer to 310 CMR 9.00 (<http://mass.gov/dep/service/regulations/310cmr09.pdf>).

- (ii) WATER QUALITY CERTIFICATE - Any project requiring a federal or state license or permit to conduct activities which may result in a discharge to waters of the United States must be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed facility. State certification must be obtained before a license or permit may be issued. Such activities include NPDES regulated discharges, dredge and fill operations, and the construction of structures in water. For further guidance, please refer to 314 CMR 9.00 (<http://mass.gov/dep/service/regulations/314cmr09.pdf>).
 - (iii) SLUDGE DISPOSAL APPROVAL – For wastewater treatment projects, include a copy of the approval letter from the MassDEP Residuals Program approving the method of residuals disposal.
 - (iv) MassDEP DIVISION OF AIR QUALITY (Permit) - Any proposed new or modified source of air contaminants, such as carbon monoxide, hydrocarbons, nitrogen oxides, sulfur dioxide, particulate matter, volatile organic compounds, and any pollutant covered by the National Emission Standards for Hazardous Air Pollutants promulgated by EPA, must be approved. For further guidance on this issue, please contact the Division of Air Quality Control and refer to 310 CMR 7.00 (<http://mass.gov/dep-service/regulations/310cmr07.pdf>).
 - c. LOCAL CONSERVATION COMMISSION (Order of Conditions) - Under Chapter 131 Section 40, the applicant must file a notice of intent with the local conservation commission if construction is to occur within 100 feet of wetlands or floodplains. Note that both natural and man-made coastal dunes are included within the definition of wetlands.
 - d. MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (massDOT) PERMIT - A permit must be obtained from the regional massDOT office for any project that crosses or does any type of work within the boundaries of a state highway.
 - e. MBTA/CONRAIL LICENSE - A license is required if the project will impact property owned by either the MBTA or CONRAIL. The appropriate agency should be contacted for further information.
 - f. OTHER FEDERAL/STATE/LOCAL PERMITS - Depending upon the project, other permits may be required and must be filed for.
- 16. PROTECTION OF WATER SUPPLIES - Any project that includes construction of pipelines for the collection or transmission of wastewater must conform to the policy for Sewer Line/Water Supply Protection found at <http://mass.gov/dep/water/laws/wsp03-1.pdf>.
 - 17. CZM CONSISTENCY CERTIFICATE - The issuance of federal permits for activities located within the coastal zone or affecting this zone requires that the applicant obtain a certification that the activities are consistent with the state coastal zone policy. For further guidance on this issue, contact the Office of Coastal Zone Management.
 - 18. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA) COMPLIANCE - Prior to the award of financial assistance, an Environmental Notification Form (ENF) must be filed with the MEPA Unit of the Executive Office of Energy and Environmental Affairs (EOEEA) if the project exceeds the review thresholds contained in 301 CMR 11.00 (<http://www.mass.gov/envir/mepa/thirdlevelpages-meparegulations/301cmr11.pdf>). After a review period, the Secretary of EOEEA will decide whether an Environmental Impact Report (EIR) is required or not. If not, then the project can proceed, subject to

any conditions that MEPA may place on the project. If an EIR is required, it must be completed by the proponent and submitted to the Secretary for an additional public comment period. Once the comment period has expired, the Secretary will render a decision on the final EIR. If it is found acceptable, and once the 60-day legal challenge period expires, the project can then proceed. The application must contain documentation that the requirements of MEPA have been satisfied.

19. **FLOOD INSURANCE PARTICIPATION** - If the project involves structures within a flood hazard area, the applicant must furnish evidence that it is either participating in the flood insurance program or a letter of intent that it will obtain the required insurance both during construction and for the useful life of the project.

Insurable structures are defined as being \$10,000 or more in value, and are new or reconstructed surface structures that are walled and roofed, such as a pump station or treatment plant control building. Facilities such as sewers, which are not likely to be damaged by flooding, are not eligible for insurance.

20. **MASSACHUSETTS HISTORICAL COMMISSION (Approval)** - A construction loan cannot be made until all work required by the Massachusetts Historical Commission (MHC) has been completed and approved by them in accordance with 950 CMR 71.00. The loan may be conditioned, in some instances, to require recovery of archaeological material during construction when a sensitive area will be affected and no reasonable alternative is available. Documentation that the requirements of MHC have been met must be included with the application.

21. **LEGISLATION (IF NEEDED)** - There are several instances where special legislation from the Massachusetts General Court could be required prior to the initiation of construction. Examples include:

- a. Construction in dedicated conservation land, including parkland;
- b. Construction by one community within the municipal boundaries of another;
- c. Formation of a local governmental unit district.
- d. Easements for construction in state owned land.

22. **PROFESSIONAL SERVICES AGREEMENT** - The application must contain draft agreements for all professional services which clearly outline the duties and responsibilities of the applicant and the contractor. The agreement will include, but not be limited to:

- a. Scope of work for the various tasks, including basic, resident, and special construction services.
- b. Time of Completion.
- c. For certain water pollution abatement facilities, start-up and post-construction services.

For professional services agreements receiving SRF subsidy, the following requirements apply:

- a. **MODEL SUBAGREEMENT CLAUSES** - The provisions of **Appendix E** are to be made a part of all professional services agreements.
- b. **SRF-90-1 COST/PRICE SUMMARY** - The request for financial assistance for professional services in excess of \$25,000 shall include a breakdown of cost and price considerations in accordance with the provisions. The following items will be included:
 1. Direct salary costs by job category.
 2. Provisional overhead rate.
 3. Other direct costs (travel, expenses, subcontracts, etc.)
 4. Profit.

The form (**Appendix F**) must be signed by both the contractor and by the applicant.

- c. DETAILED FEE BREAKDOWN - All fees shall be broken out by task (shop drawings, resident services, start-up, etc.), job category (vice president, project engineer, draftsman, etc.), and cost.
 - d. SUBCONTRACTS WHERE APPLICABLE - All lower tier subcontracts in excess of \$25,000 must be submitted in draft form with the application, including an executed SRF 90-01 form, and a detailed fee breakdown.
 - e. DISADVANTAGED BUSINESS ENTERPRISE - Applicants receiving assistance must make positive efforts to use disadvantaged minority and women owned businesses for professional services. Such efforts should achieve a goal of 3.40% participation for disadvantaged minority business (MBE) and 3.80% participation for disadvantaged women owned business (WBE) but, at a minimum, should allow these sources the maximum feasible opportunity to compete for subagreements to be performed using state trust monies. Sample forms are provided in **Appendix G**.
 - f. CHAPTER 233 - COMPLIANCE STATEMENT ON MA TAXES - A statement must be signed by the consultant engineer(s) for the project that states that the engineer(s) is in compliance with Massachusetts tax laws. A sample statement is provided in **Appendix H**.
- 23. MAP OF PROJECT - Each application must be accompanied by a project map, denoting the water pollution abatement facilities and/or the site plan of the treatment plant. It should delineate:
 - a. Jurisdictional Boundaries.
 - b. Existing versus proposed facilities.
 - 24. BASIC DESIGN DATA - A detailed copy of the basic design data for the pollution abatement facilities must be included.
 - 25. PROVISION FOR O&M PROGRAM - The applicant must clearly demonstrate that it has the capability to properly operate and maintain the water pollution abatement facilities. To this end, an operation and maintenance manual (O&M) must be prepared for all wastewater treatment plants and major pumping stations which describes the equipment, develops staffing requirements, and outlines the procedures necessary to keep the facilities operating in an optimum fashion. A provision for the preparation of an O&M manual should appear in the Professional Services Agreement.
 - 26. DISPLACEMENT OF PERSONS OR BUSINESSES - The application must state whether this project has caused, since January 1, 1971, or will cause, the displacement of any individual, family business, or farm as required by the Uniform Relocation and Real Property Assistance Policies Act of 1970 (PL 91-646).
 - 27. PLAN OF OPERATION - Prior to the award of financial assistance for water pollution abatement facilities, a preliminary plan of operation must be approved by MassDEP. By the 50% stage of construction, a final plan must be completed and approved. For further guidance on this issue, please contact the appropriate MassDEP program manager.
 - 28. START-UP SERVICES - For facilities, the Professional Services Agreement must provide for start-up services during the first year following the initiation of operation. The extent of the services will vary depending on the size and complexity of the project and on the capabilities of the existing or proposed plant personnel. For further guidance on this issue, please contact the appropriate MassDEP program manager.
 - 29. POST-CONSTRUCTION SERVICES - For facilities, the applicant must notify MassDEP in writing of the actual date of initiation of operation. During the first year following initiation of operations, the

applicant will monitor the performance of the facilities. One year after initiation of operations, the applicant shall submit a report to MassDEP outlining whether the project meets performance standards.

Part I

Applicant Information and Certification

(attach additional pages as necessary)

1. LOCAL GOVERNMENTAL UNIT (LGU)		
LGU Name:	Dept. of Revenue ID No.:	FEIN
Authorized Representative:	Title:	
Street/P.O. Box:		
City/Town:	State:	Zip:
Telephone: ()	Fax: ()	E-Mail:

2. LGU CONTACT PERSON (if different from item 1)		
Name:	Title:	
Mailing Address (if different from item 1)		
Street/P.O. Box:		
City/Town:	State:	Zip:
Telephone: ()	Fax: ()	E-Mail:

3. ENGINEER OR CONSULTANT FIRM		
Firm/Agency:	FEIN	
Contact Person:		
Mailing Address		
Street/P.O. Box:		
City/Town:	State:	Zip:
Telephone: ()	Fax: ()	E-Mail:

4. CWSRF PROJECT IDENTIFICATION NUMBER	
ID No. from Current Priority List:	
Project Description:	

5. MUNICIPALITIES SERVED BY TREATMENT WORKS (Name / Permit Numbers)	

6. AMOUNT OF ASSISTANCE REQUESTED
\$

7. LOCAL APPROPRIATION		Amount	Available Balance
Bonds	\$		\$
Cash	\$		\$
Other	\$		\$

8. TYPE OF FINANCIAL ASSISTANCE REQUESTED		
(Check as applicable)	Loan for new project	
	Refinancing of debt incurred	
If refinancing, list amount of outstanding debt and maturity dates.		
Amount	Date of Issue	Maturity Date

9. CERTIFICATION
In submitting this Application to MassDEP, the Applicant certifies that it shall comply with the following Project related conditions, and understands that the Applicant's non-compliance with one or more of these conditions may preclude MassDEP's issuance of a Project Approval Certificate or entry into a Project Regulatory Agreement.
(1) The Applicant shall obtain MassDEP's prior written approval to: (a) advertise any Invitation To Bid or Request for Proposals to procure contracts for the Project; and (b) award any contracts for the Project.
(2) The Borrower shall comply with the Affirmative Action requirements in the Department's Regulations and the federal Disadvantaged Business Enterprise (DBE) rule. The Borrower shall comply with the Civil Rights Act of 1964, 42 USC s.2000(a) et seq., as amended, and all Executive Orders and regulations promulgated hereunder. The Borrower shall sign and deliver to MassDEP a Nondiscrimination in Employment form. The Borrower shall ensure that any prime contracts or subcontracts for services, construction, goods or equipment for the Project contain the M/WBE utilization goals of 3.40% MBE and 3.80% WBE.
(3) The Applicant shall at all times provide and maintain competent and adequate resident supervision and inspection of the Project under the direction of a licensed professional engineer. Such resident site engineer shall ensure that the implementation of the Project conforms with the approved plans and specifications, and shall certify to the Applicant and MassDEP at the completion of the Project that the implementation of the Project is in accordance with MassDEP approved final plans and specifications for the Project. The Applicant also agrees to submit an executed copy of the contract for resident site engineering services to MassDEP within sixty (60) days of the date of the contract award. The Applicant understands that no payments for the Project will be processed until such contract has been submitted to MassDEP.
(4) Prior to receiving final payment for the Project, the Applicant shall certify to MassDEP that the Project has been completed and performed in accordance with the Project Regulatory Agreement.
(5) The Applicant shall be solely responsible for the implementation and completion of the Project in accordance with MassDEP approved plans and specifications and MassDEP permit(s) issued for the Project, and for the economical and efficient operation and administration of the Project. The Applicant's responsibilities include retaining sufficient operating personnel and conducting operational tests and other needed evaluations to ensure the economical and efficient operation and administration of the Project.
(6) The Applicant shall establish accounts for the Project, which shall be maintained in accordance with generally accepted government accounting standards.
(7) The Applicant understands that if MassDEP issues a Project Approval Certificate for this project, such action does not constitute MassDEP's sanction or approval of any changes or deviation from any applicable state regulatory or permit standards, criteria, or conditions, or from the terms or schedules of state enforcement actions or orders applicable to the Project.
(8) The Applicant shall maintain all Project records for seven years after the issuance of final payment or until any litigation, appeal, claim, or audit that is begun before the end of the seven-year period is completed and resolved, whichever is longer.
(9) The Applicant agrees to provide any Project information and documentation requested by MassDEP.
(10) The Applicant shall obtain fee simple title or such other property interest in the Project site, including any easements and rights-of-way, necessary to ensure the undisturbed use and possession of the Project site for the purposes of implementation and operation of the Project for its estimated life.

(11) Any proposed change in Project-related contracts, which substantially modifies the Project initially proposed, shall be submitted to MassDEP for prior approval.	
(12) The Applicant's implementation of the Project, including the procurement of related contracts, shall comply with all applicable requirements of state and local laws, ordinances, by-laws, rules and regulations.	
(13) MassDEP representatives shall have access to Project work whenever it is in preparation or progress, and shall be provided proper facilities for such Project access and inspection. All of the Applicant's construction and other relevant contracts shall contain the above provision.	
<p>To the best of my knowledge and belief, data provided in this application is true and correct; the documentation has been duly authorized by the governing body of the applicant. Furthermore, the applicant certifies that it possesses the legal authority to apply for the loan, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application. The same resolution, motion, or similar action is directing and authorizing the person identified below as the authorized representative of the applicant to act in connection with the application and to provide such additional information as may be required.</p>	
Name of Representative (Type)	Title
Signature of Representative	(Date)

Part II

Project Section Information

1. Plans and specifications		
Contract Number	Contract Name	Submittal Date

2. Construction Schedule (estimated dates – mm/dd/yy)					
Contract No(s).					
Bid Advertisement					
Contract Award					
Contract Completion					
Calendar Days to Complete					

3. Summary of Costs *	Total Costs	Eligible Costs
A. Construction (Use bid proposals) List Contract Name or Number		
Construction Contingency (max. 10% pre-bid; 5% post-bid)		
Sub Total		
B. Construction Services		
a. General Supervision		
b. Resident Engineering		
c. Testing of Materials		
d. As Built Plans		
e. Operation and Maintenance Manual		
f. Start up Supervision		
g. Other:		
Sub Total		
C. Other Costs		
a. Police – Traffic Detail		
Sub Total		
TOTAL		

Date of Estimate: _____

ENR Construction Cost Index: _____

*** Attach detailed construction bid sheets with engineer's estimate.**

Part II

Environmental Benefits

Permit Type:		Permit Number:	
Population Served	by the Project:		by the System:
Wastewater Volume	for the Project:		for the System:
Discharge Affected (check all that apply)			
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> Ocean Outfall <input type="checkbox"/> Estuary/Coastal Bay <input type="checkbox"/> Wetland <input type="checkbox"/> Surface Water (Stream, River, Lake) <input type="checkbox"/> Groundwater </div> <div style="width: 50%;"> <input type="checkbox"/> Land Application <input type="checkbox"/> Other/Reuse <input type="checkbox"/> Eliminates Discharge <input type="checkbox"/> No Change/No Discharge <input type="checkbox"/> Seasonal Discharge </div> </div>			
Wastewater Treatment Works Categories (check all that apply)			Percent of Project
<input type="checkbox"/> Secondary Treatment			
<input type="checkbox"/> Advanced Treatment			
<input type="checkbox"/> Infiltration/Inflow Correction			
<input type="checkbox"/> Sewer System Rehabilitation			
<input type="checkbox"/> New Collector Sewers and Appurtenances			
<input type="checkbox"/> New Interceptor Sewer Systems and Appurtenances			
<input type="checkbox"/> CSO Correction			
<input type="checkbox"/> Storm Sewers			
<input type="checkbox"/> Recycled Water Distribution			
<input type="checkbox"/> Non-Point Source			
Primary Impacted Waterbody:			
Other Impacted Waterbody (if any):			
Project Contributes to Water Quality:		Project Allows System to:	
<input type="checkbox"/> Improvement <input type="checkbox"/> Maintenance <input type="checkbox"/> Not Applicable		<input type="checkbox"/> Achieve Compliance <input type="checkbox"/> Maintain Compliance <input type="checkbox"/> Not Applicable	
Project Allows the System to Address:			
<input type="checkbox"/> Existing TMDL <input type="checkbox"/> Projected TMDL <input type="checkbox"/> Watershed Management Plan			

Clean Water State Revolving Fund Program Loan Application Checklist

CONSTRUCTION STAGE PROJECTS

Please use this checklist to confirm that all required forms and supplemental information have been included with the application, and submit the checklist with your application.

Item	Included in this package (check)	Previously submitted (date)	Not applicable (check)
1. Parts I and II			
2. Plans & Specifications			
3. Authority to File			
4. Certifying Authority to File			
5. Local Appropriation			
6. Title / Easements (Legal Opinion)			
7. IWRMP, CWMP or Project Evaluation Report			
8. Water Resources Certifications (310 CMR 44.08(2)(a))			
9. Land Use Certification (310 CMR 44.08(2)(b))			
10. Intermunicipal Agreements			
11. User Charge System (310 CMR 44.11(2)(b))			
12. Sewer Use Ordinance (on file with MassDEP)			
13. Federal and/or State Wastewater Discharge Permits			
14. Site Hearing			
15. Construction Permits			
a. US Army Corps of Engineers			
b. MassDEP			
- Waterways			
- Water Quality Certification			
- Sludge Disposal Approval			
- Air Quality			
c. Local Conservation Commission (Conditions)			
d. massDOT			
e. MBTA/Railroad			
f. Other State/Federal Permits Required			
16. Protection of Water Supplies			
17. Coastal Zone Management Consistency Certificate			
18. MEPA Compliance			
19. Flood Insurance Participation			
20. Historic Preservation			
21. Legislation (if needed)			
22. Professional Services Agreements			
a. Required Model Subagreement Clauses			
b. Cost / Price Summary			
c. Detailed Fee Breakdown			

d. Subcontracts			
e. Minority / Women Business Enterprise			
f. Chapter 233 - Statement on MA Taxes			
23. Map of Project			
24. Basic Design Data			
25. Provision for O & M Program			
26. Displacement of Persons or Businesses			
27. Plan of Operation			
28. Start-up Services			
29. Post-Construction Services			

Appendix A

Authority to File
And
Certifying Authority to File

Sample: Resolution Authorizing Officer to File Application with the Massachusetts Department of Environmental Protection for State Financial Assistance for Water Pollution Abatement Projects.

AUTHORITY TO FILE

Whereas, _____, after thorough investigation,
(Applicant)
has determined that the work activity consisting of: _____

(describe project)

is both in the public interest and necessary to protect the public health, and that to undertake this activity, it is necessary to apply for assistance; and

Whereas, the Massachusetts Department of Environmental Protection (the "MassDEP") and the Massachusetts Water Pollution Abatement Trust (the "Trust") of the Commonwealth of Massachusetts, pursuant to Chapter 21 and Chapter 29C of the General Laws of the Commonwealth ("Chapter 21" and "Chapter 29C") are authorized to make loans to municipalities for the purpose of funding planning and construction activities relative to Water Pollution Abatement Projects; and

Whereas, the Applicant has examined the provisions of the Act, Chapter 21 and Chapter 29C, and believes it to be in the public interest to file a loan application.

NOW, THEREFORE, BE IT RESOLVED by _____
(Governing Body)

as follows:

1. That _____ is hereby authorized on behalf
(Title of Official)
of the Applicant to file applications and execute agreements for grant and/or loan assistance as well as furnishing such information, data and documents pertaining to the applicant for a grant(s) and/or loan(s) as may be required; and otherwise to act as the authorized representative of the Applicant in connection with this application;
2. That the purpose of said loan(s), if awarded, shall be to fund construction activities.
3. That if said award is made the Applicant agrees to pay those costs which constitute the required Applicant's share of the project cost.

Sample: Certification to the Massachusetts Department of Environmental Protection, as to Authority to File Applications for State Financial Assistance for Water Pollution Abatement Projects.

CERTIFYING AUTHORITY TO FILE

I hereby certify that the _____ of
(Name of Governing Body)
the _____
(Corporate Name of Local Government Unit)

(hereinafter referred to as the "Applicant"), at a meeting noticed and conducted in accordance with all applicable legal requirements, duly voted to authorize

(Title of Local Government Unit Official)

to act on behalf of the Applicant, as its agent, in filing applications for, executing agreements regarding, and performing any and all other actions necessary to secure for the Applicant such loan(s) for construction or planning of Water Pollution Abatement Projects as may be made available to the Applicant pursuant to the provisions of the Massachusetts Clean Waters Act (M.G.L. c.21, section 27-33E, inclusive, as amended) and the Water Pollution Abatement Revolving Loan Program (M.G.L. c.29C) for the following project:

(describe project)

I hereby certify that _____ is the present incumbent
(Name of Person)
of the position referenced above, and do hereby certify:

1. That the attached resolution is a true and correct copy of the resolution as finally adopted at a meeting of the governing body held on the ____ day of ____, 20__, and duly recorded in my office:
2. That said meeting was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting, and a legally sufficient number of members of the governing body voted in the proper manner and for the adoption of said resolution; that all other requirements and proceedings under the law incident to the proper adoption or passage of said resolution, including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate:

3. That if an impression of a seal has been affixed below, it constitutes the official seal of the Applicant and this certificate is hereby executed under such official seal; but if no seal has been affixed, the Applicant does not have an official seal:

IN WITNESS WHEREOF, I have hereunto set my hand this

_____ day of _____, 20____

Appendix B

Sample Language for Local Appropriations

MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST

NOTE: The following are suggested forms of a town meeting article and vote and city council loan order. These forms are provided as guidance only. Bond counsel to the municipality should be consulted to determine the exact form of authorization required and to determine which local body or official must approve the terms of the borrowing and the forms of documentation. Note also that districts and regional local governmental units may have substantially different authorization requirements from those indicated below for towns and cities.

SUGGESTED FORM OF TOWN MEETING ARTICLE AND VOTE

Article

To see if the Town will vote to appropriate a sum of money for the [construction] [planning] of (insert description of the water pollution abatement project); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise; and to take any other action relative thereto.

Vote

Voted: that \$_____ is appropriated for the purpose of financing the [construction] [planning] of (insert description of the water pollution abatement project) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow \$_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Board of Selectmen, Board of Public Works or other appropriate local body or official) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

SUGGESTED FORM OF CITY COUNCIL LOAN ORDER

Ordered: that \$_____ is appropriated for the purpose of financing the [construction] [planning] of (insert description of the water pollution abatement project) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the (Mayor or Manager) and the (Auditor, Finance Committee or other appropriate local body or official) is authorized to borrow \$_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the City unless the Treasurer with the approval of the (Mayor or Manager) and the (Auditor, Finance Committee or other appropriate local body or official) determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the (Mayor or Manager) [and the (Auditor, Finance Committee or other appropriate local body or official)] is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or a security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Mayor or Manager) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

Appendix C

Certificate As To Title To Project Site

CERTIFICATE AS TO TITLE TO PROJECT SITE

I, _____, Attorney At Law, representing the (City/Town)
of _____, Massachusetts, herein called the Applicant, as title counsel,
do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (treatment plant, interceptors, outfalls, pumping stations, force mains, and appurtenances) of the water pollution abatement project for which State Financial Assistance has been offered, identified as CWSRF- _____
2. That I have examined the deed records of the county or counties in which this project is to be located and, in my opinion, the Applicant has a legal and valid fee simple title or other estate or interest in the site of the project, including the necessary easements and rights-of-way as are necessary to undisturbed use and possession for the purposes of construction and operation for the estimated life of the project.
3. That any deeds or documents required to be recorded, in order to protect the title of the owner and the interest of the Applicant, have been duly recorded or filed for record wherever necessary with reference to Contracts _____ through _____, inclusive.

Dated this _____ day of _____, 20____.

Appendix D

Water Resource and Wastewater Planning Certification And Land Use Certification

WATER RESOURCES AND WASTEWATER PLANNING CERTIFICATION

I, the undersigned, being duly authorized to act on behalf of the Applicant, certify that to the best of my knowledge this project is consistent with current existing state, regional, and local water resource and wastewater planning requirements including but not limited to:

1. river basin water quality management plans pursuant to section 303(e) of the Federal Clean Water Act;
2. nonpoint source management plans pursuant to section 319 of the Federal Clean Water Act;
3. estuaries management plans pursuant to section 320 of the Federal Clean Water Act;
4. local water resource management plans pursuant to regulations of the Water Resources Commission;
5. water emergency planning pursuant to c.21G of the Massachusetts General Laws;
6. Phase II Storm Water General Permit.

Applicant

Type Name	Title
-----------	-------

Signature	Date
-----------	------

LAND USE CERTIFICATION

I, the undersigned, being duly authorized to act on behalf of the Applicant, certify that the land use regulations, zoning and other controls identified below are consistent with the wastewater system service populations as projected in the Applicant's wastewater management plan:

Applicant

Type Name

Title

Signature

Date

Appendix E

Model Sub-Agreement Provisions

Professional Services Agreements -Required Provisions

All contracts between CWSRF borrowers and professional services consultants shall contain the following provisions.

- (1) The owner and the contractor agree that the following provisions apply to the eligible work to be performed under this agreement and that such provisions supersede any conflicting provisions of this agreement.
- (2) The work under this agreement is funded in part by the water pollution abatement fund. Neither the Commonwealth of Massachusetts nor the Massachusetts Department of Environmental Protection (MassDEP) nor the Water Pollution Abatement Trust is a party to this agreement. As used in these clauses, the words "the date of execution of this agreement" means the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.
- (3) The owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or this agreement.
- (4) The contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.
- (5) The contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable MassDEP requirements in effect on the date of execution of this agreement.
- (6) The owner's or MassDEP's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor MassDEP's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.
- (7) The contractor shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or MassDEP caused by the contractor's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent solely attributable to the owner, owner-furnished data or any third party not controlled by the contractor. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control. Where innovative processes or techniques are recommended by the engineer and are used, the engineer shall be liable only for gross negligence to the extent of such use.
- (8) The services to be performed by the contractor shall include all services required to complete the scope of work as defined and set out in the professional services agreement to which these provisions are attached in accordance with applicable regulations.
- (9) The owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change, unless the owner grants a further period of time before the date of final payment under this agreement.

(10) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the owner.

(11) In the event that there is a modification of MassDEP requirements relating to the services to be performed under this agreement after the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.

(12) Either party may terminate this agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(13) The owner may terminate this agreement, in whole or in part, in writing, for its convenience, if the termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new phase) and the contractor is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party before termination.

(14) If the owner terminates for default, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on services not performed or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs the owner incurs because of the contractor's default. If the contractor terminates for default or if the owner terminates for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred before the termination, in addition to termination settlement costs the contractor reasonably incurs relating to commitments which had become firm before the termination.

(15) Upon receipt of a termination action under paragraphs (13) or (14), the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the contractor may have accumulated in performing this agreement, whether completed or in process.

(16) Upon termination under paragraph (13) or (14), the owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work the owner takes over for completion will be completed at the owner's risk, and the owner will hold harmless the contractor from all claims and damages arising out of improper use of the contractor's work.

(17) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the owner. In such event, adjustment of the price provided for in this agreement shall be made as paragraph (14) provides.

(18) Except as this agreement otherwise provides, all claims, counter-claims, disputes, and other matters in question between the owner and the contractor arising out of or relating to this agreement or the breach of it will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction pursuant to the laws of Massachusetts.

(19) The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on eligible work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission and a copy of the cost summary submitted to the owner. The Governor, the Secretary of Administration and Finance, MassDEP and State Auditor's Office or

any of their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.

(20) The contractor agrees to include paragraphs (19)-(23) in all his contracts and all subcontracts directly related to project performance that are in excess of \$25,000.

(21) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(22) The contractor agrees to the disclosure of all information and reports resulting from access to records under paragraphs (19) or (20), to any of the agencies referred to in paragraph (19), provided that the contractor is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the contractor.

(23) The contractor shall maintain and make available records under paragraph (19) and (20) during performance on eligible work under this agreement and until 7 years from the date of final payment for the project. In addition, those records which relate to any "Dispute", appeal under an assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such appeal, litigation, claim, or exception if such date is later than seven years from the date of final payment.

(24) (This clause is applicable if the amount of this agreement exceeds \$100,000). If the owner or MassDEP determine that any price, including fee, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any sums because the contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or fee shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(25) Any subcontractors and outside associates or consultants required by the contractor in connection with services under this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as the owner specifically authorizes in writing during the performance of this agreement. The owner must give prior approval for any substitutions in or additions to such subcontractors, associates, or consultants.

(26) In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability, shall not discriminate in the selection or retention of subcontractors, and shall not discriminate in the procurement of materials and rentals of equipment.

(27) The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(28) If it is found, after notice and hearing, by the owner that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in form of entertainment, gifts, or otherwise), to any official, employee or agent of the owner, or of the state, in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this agreement, the owner may, by written notice to the contractor, terminate the right of the contractor to proceed under this agreement. The owner may

also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts upon which the owner bases such findings shall be in issue and may be reviewed in proceedings under the remedies clause of this agreement.

(29) In the event this agreement is terminated as provided in paragraph (28), the owner shall be entitled: (1) To pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and (2) as penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the owner) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

(30) MassDEP has the right to use, duplicate, and disclose, in whole or in part, in any manner for any purpose whatsoever, any plans, drawings, designs, specifications, computer programs (which are substantially paid for with Trust funds), technical reports, operating manuals, and other work submitted with an application or which are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement. The owner and MassDEP reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The contractor shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data.

(31) All such subject data furnished by the contractor pursuant to this agreement are instruments of his services in respect of the project. It is understood that the contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the owner reuses the subject data without the contractor's specific written verification or adaptation, such reuse will be at the sole risk of the owner, without liability to the contractor. Any such verification or adaptation will entitle the contractor to further compensation at rates agreed upon by the owner and the contractor.

Appendix F

Cost and Price Summary (SRF 90-1)

COST OR PRICE SUMMARY FORMAT FOR SUBAGREEMENTS UNDER THE STATE REVOLVING FUND PROGRAM				SRF-90-1
PART I - GENERAL				
1. APPLICANT		2. PROJECT		
3. NAME OF CONTRACTOR OR SUBCONTRACTOR	4. FEIN	5. DATE OF PROPOSAL		
6. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR		7. TYPE OF SERVICE TO BE FURNISHED		
PART II - COST SUMMARY				
8. DIRECT LABOR (Specify labor categories)	ESTI- MATED HOURS	HOURLY RATE	ESTIMATED COST	TOTAL
			\$	
DIRECT LABOR TOTAL:				\$
9. INDIRECT COSTS (Specify indirect cost pools)	RATE	x BASE =	ESTIMATED COST	
		\$	\$	
INDIRECT COSTS TOTAL:				\$
10. OTHER DIRECT COSTS				
a. TRAVEL			ESTIMATED COST	
(1) TRANSPORTATION			\$	
(2) PER DIEM			\$	
			\$	
TRAVEL SUBTOTAL:				
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)	QTY	COST	ESTIMATED COST	
		\$	\$	
EQUIPMENT SUBTOTAL:			\$	
c. SUBCONTRACTS			ESTIMATED COST	
			\$	
SUBCONTRACTS SUBTOTAL:			\$	
d. OTHER (Specify categories)			ESTIMATED COST	
			\$	
OTHER SUBTOTAL:			\$	
OTHER DIRECT COSTS TOTAL:				\$
11. TOTAL ESTIMATED COST				\$
12. PROFIT				\$
13. TOTAL PRICE				\$

PART III - CERTIFICATIONS

14. CONTRACTOR

14a. HAS A FEDERAL AGENCY OR A FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL GRANT OR CONTRACT WITHIN THE PAST TWELVE MONTHS?

YES NO (If "YES" give name, address, and telephone number of reviewing office.)

14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

14c. This proposal is submitted for use in connection with and in response to (1) _____
_____. This is to certify that to the best of my knowledge and belief that the cost
and pricing data summarized herein are complete, current, and accurate as of (2) _____
and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I
understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above costs and pricing data have been
determined, as a result of audit, not to have been complete, current, and accurate as of the date above.

(3) _____
DATE OF EXECUTION SIGNATURE OF PROPOSER

TITLE OF PROPOSER

15. APPLICANT

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appear acceptable for subagreement award.

DATE OF EXECUTION SIGNATURE OF APPLICANT

TITLE

16. MassDEP REVIEWER (if applicable)

DATE OF EXECUTION SIGNATURE OF REVIEWER

TITLE

Appendix G

DBE Forms - Professional Services Contracts

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FOR PROFESSIONAL SERVICES CONTRACTS

I. Purpose

The purpose of this guidance document is to assist local governmental units (LGUs) and their Prime Consultant in demonstrating compliance with the United States Environmental Protection Agency (EPA) requirements for disadvantaged business enterprise (DBE) participation in professional services contracts.

II. Requirements

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BACKGROUND

In May 2008 a new EPA rule became effective that changed the Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Program to a Disadvantaged Business Enterprise (DBE) Program.

For firms to qualify under the old MBE/WBE program they needed to be socially disadvantaged and had to be certified by the State Office of Minority and Women Business Assistance (SOMWBA), recently renamed the Supplier Diversity Office (SDO). Under the new DBE rule, the firms must be both **socially** and **economically** disadvantaged, citizens of the United States, and certified as a DBE either by the state or the federal government. Women and certain minorities are presumed to be socially disadvantaged. The economic disadvantage is measured by the owner's initial and continuing personal net worth of less than \$1,320,000.

Because the Clean Water Act requires the use of MBEs and WBEs, these firms will still be utilized in the State Revolving Fund (SRF) Loan Program, but they must also be certified as DBEs.

SDO (formerly SOWMBA) will continue to be the certifying agency for the SRF program. SDO has added the personal net worth and citizenship requirements to their certifying process and firms will be classified as either an MBE or WBE and DBE.

The following are the new DBE goals.

Disadvantaged MBEs (D/MBE) 3.40%* Disadvantaged WBEs (D/WBE) 3.80%*

III. Procedures

1. In cases where the professional services contracts achieve the goal of 3.40% D/MBE and 3.80% D/WBE participation, the LGU and/or its Prime Consultant is required to submit Form EEO-DEP-190E (Schedule of Participation for Professional Services) and Form EEO-DEP-191E (Letter of Intent) to MassDEP. Form EEO-DEP-190E identifies the proposed DBE subcontractors, the type of services to be provided by each subcontractor (e.g., Architecture, preparation of O&M manuals, laboratory analysis, etc.), and the respective dollar value of their participation. Form EEO-DEP-191E must be completed for each M/WBE subcontractor identified on Form EEO-DEP-190E.
2. In the event that a professional services contract does not achieve the goal of 3.40% D/MBE and 3.80% D/WBE participation, MassDEP may request that the LGU's Prime Consultant provide additional documentation demonstrating what positive efforts were made to achieve the participation goal. In cases where the LGU's Prime Consultant fails to demonstrate the 3.40% D/MBE and 3.80% D/WBE participation in the professional services contract, the Prime Consultant must submit Form EEO-DEP-490E (Request for Waiver), together with the supporting documentation identified therein, to MassDEP.
3. MassDEP's Project Approval Certificate shall contain a condition requiring the LGU's Prime Consultant to submit all executed consultant contracts, including contracts with M/WBE subcontractor(s) if in excess of \$25,000, to MassDEP within sixty (60) days from the date of the award of financial assistance to the LGU by the Water Pollution Abatement Trust (the Trust).
4. In order for MassDEP to monitor compliance with its above stated M/WBE provisions for professional services contracts, any LGU who does not file monthly or bi-monthly Payment Requisitions on Form -3000 (Consultant Engineer's Request and Certification) to document W/MBE activity, will be required at a minimum to submit Form EEO-DEP-390E (Quarterly M/WBE Activity Report) on a quarterly basis. The Form EEO-DEP-390E is not attached to this package but will be made available to those that need to use it when the Form 3000 reporting is not an option.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

SCHEDULE OF PARTICIPATION FOR PROFESSIONAL SERVICES

Project Title: _____ **Project Location:** _____

Disadvantaged Minority Business Enterprise Participation in the SRF Loan Work

Name & Address of D/MBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		

Total D/MBE Commitment:

\$

Percentage D/MBE Participation = (Total D/MBE Commitment) / (Total Engineering Cost) =

%

Disadvantaged Women Business Enterprise Participation in the SRF Loan Work

Name & Address of D/WBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		

Total D/WBE Commitment:

\$

Percentage D/WBE Participation = (Total D/WBE Commitment) / (Total Engineering Cost) =

%

The Prime Consultant agrees to furnish implementation reports as required by the Awarding Authority to indicate the D/MBE(s) and D/WBE(s) which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

Name of Prime Consultant: _____

Date: _____ By: _____

Signature

NOTE: Participation of a DBE may be counted in only their certified category; the same dollar participation cannot be used in computing the percentage of D/MBE participation and again of D/WBE participation.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

LETTER OF INTENT FOR PROFESSIONAL SERVICES

This form is to be completed by the disadvantaged MBE and WBE and must be submitted by the Prime Consultant as part of the proposal. A separate form must be completed for each D/MBE and D/WBE involved in the project.

Project Title: _____ Project Location: _____

TO: _____
(Prime Consultant)

FROM: _____
(Please Indicate Status [] D/MBE or [] D/WBE)

° I/we intend to perform work in connection with the above project as (check one):

[] An individual [] A partnership
[] A corporation [] A joint venture with: _____
[] Other (explain): _____

° It is understood that if you are awarded the contract, you intend to enter into an agreement to perform the activity described below for the prices indicated.

DBE PARTICIPATION

Description of Activity	Date of Project Commencement	\$ Commitment	% Total Engineering Cost
		\$	%

° The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above referenced project.

PRIME CONSULTANT	MBE/WBE
(Authorized Original Signature) _____ Date _____	(Authorized Original Signature) _____ Date _____
ADDRESS: _____	ADDRESS: _____
TELEPHONE #: _____	TELEPHONE #: _____
FEIN: _____	FEIN: _____

ORIGINALS:

- ° Compliance Mgr. City/Town Project Location
- ° MassDEP Program Manager for MassDEP's CRU Director

*** Attach a copy of current (within 2 years) DBE Certification**

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

REQUEST FOR WAIVER FOR PROFESSIONAL SERVICES

Upon exhausting all known sources and making every possible effort to meet the minimum requirements for DBE participation, the Prime Consultant seeks relief from these requirements by filing this form. Failure to comply with this process shall be cause to reject the eligibility of engineering costs.

General Information

Project Title: _____ Project Location: _____

Prime Consultant: _____

Mailing Address: _____

Contact Person: _____ Telephone No. () _____ Ext. _____

Minimum Requirements

The Prime Consultant must show that good faith efforts were undertaken to comply with the percentage goals as specified. The firm seeking relief must show that such efforts were taken appropriately in advance of the time set for approval of the application by submitting the following:

- A. A detailed record of the effort made to contact and negotiate with minority and/or woman owned businesses, including:
1. names, addresses, telephone numbers and contact dates of all such companies contacted;
 2. copies of dated written notice(s) which were sent to DBE potential subcontractors prior to application deadlines;
 3. copies of dated advertisements as appearing in general publications, trade-oriented publications, and applicable minority/women-focused media detailing the opportunities for participation;
 4. a detailed statement as to why each subcontractor contacted (i) was not willing to do the job or (ii) was not qualified to perform the work as solicited; and
 5. in the case(s) where a negotiated price could not be reached the Prime Consultant should detail what efforts were made to reach an agreement on a competitive price.
- B. MassDEP may require the Prime Consultant to produce such additional information as it deems appropriate.

- C. No later than fifteen (15) days after receipt of all required information and documentation, MassDEP shall make a determination, in writing, whether the waiver request is granted and shall provide that determination to the Prime Consultant and Awarding Authority. If the waiver request is denied, the facts upon which a denial is based will be set forth in writing.

Special Note

If at any time, MassDEP determines that one or more of the DBE contractors as submitted by the Prime Consultant on form EEO-DEP-190C is not certified, the bidder shall have 10 working days, following notification to MassDEP, to either find a certified DBE contractor to perform work equal to or greater than that of the uncertified contractor or submit a waiver request.

CERTIFICATION

The undersigned herewith certifies that the above information and appropriate attachments are true and accurate to the best of my knowledge and that I have been authorized to act on behalf of the Prime Consultant in this matter.

(authorized original signature)

DATE

MAILING INSTRUCTIONS: (CERTIFIED MAIL)

TO: MassDEP-DMS PROGRAM
MANAGER
ONE WINTER STREET – 6th FLOOR
BOSTON, MA 02108-3237

CC: MassDEP - CRU DIRECTOR
ONE WINTER STREET - 4TH FLOOR
BOSTON, MA 02108-3237

Appendix H

Statement of Tax Compliance

STATEMENT OF TAX COMPLIANCE

I, _____, as _____ of
(Title)

_____, whose principal place of business is located at
(Business)

_____, do hereby certify that the above-named
_____ has complied with all laws of the
Commonwealth of Massachusetts relating to taxes, in accordance with the provisions of
Massachusetts General Laws, Chapter 62C, 49A, as amended.

Signed under the penalties of perjury this _____ day of _____, 20_____.

DATED: _____

(Authorized Signature)

Appendix I

Loan Reimbursements

Loan Reimbursement Forms

Once a loan has been made with the Trust the community may begin seeking reimbursement for costs incurred on the project. The consultant engineer for the project will fill out the forms, gather the appropriate backup and submit the forms to MassDEP. MassDEP then forwards a 1000 form to the Trust. The Trust will then wire transfer the funds to the community.

The required forms needed to seek reimbursement are: 1000, 2000 and 3000 forms. The 1000 form states the following: the approved amount of the loan, the previous requests made by the community and the current requested amount. This form must be signed by the Authorized Representative of the community.

The 2000 form is known as the contractor's form. This form shows the approved amount of the contractor's contract and M/WBE information. Similar to the 1000 form, the 2000 form maintains a running balance of the contract. The M/WBE information must be updated with each reimbursement request. The 2000 form requires the signature of the contractor, the consulting engineer and the MassDEP inspector.

The 3000 form is known as the consultant engineer's form. The 3000 form is exactly like the 2000 form and its requirements. The 3000 form requires the signature of the consulting engineer.

When the community signs a final loan agreement with the Trust either the community or the consulting engineer should contact MassDEP to receive a copy of these forms. Those projects in the Northeast and Western regions should contact **Robert Bourque at (617) 556-1103**, and for those projects in the Southeast and Central regions contact **Margaret Mansfield at (617) 292-5943**.

Samples of these forms follow this page.

BUREAU OF RESOURCE PROTECTION

PAYMENT REQUISITION

LOAN NO.: _____ DMS PROJECT NO.: _____		REQUEST NO.: _____ 1 _____	
LEGAL NAME AND ADDRESS OF BORROWER:		PAYABLE TO:	
		PAYMENT METHOD: WIRE TRANSFER	
		ACCOUNT #:	
EXPENDITURE TYPE	APPROVED AMOUNT \$	PREVIOUS REQUESTS \$	THIS REQUEST \$
Technical Expense	\$ -	\$ -	\$ -
Construction	\$ -	\$ -	\$ -
Contingency	\$ -		
Administrative (Police)	\$ -	\$ -	\$ -
Totals	\$ -	\$ -	\$ -

SAMPLE

CERTIFICATION OF THE BORROWER:

The Authorized Representative of the Borrower identified below certifies the following:

(i) This payment is for Project Costs and the obligations specified herein have not been the basis for a prior requisition that has been paid;

(ii) there has been no Default, as defined in the Regulatory Agreement hereunder or no Event of Default as defined in the Loan Agreement, and no event or condition exists which after notice or lapse of time or both, would become a Default under the Regulatory Agreement or an Event of Default under the Loan Agreement exists; and

(iii) the payment requested by this requisition is due for work actually performed or materials or property actually supplied prior to the date of this requisition less retainage.

Signature: _____

Print Name: _____

Title: _____

Date: _____

(To be completed by the DEP Division of Municipal Services)

Amount Requested: _____

Signature: _____

Print Name: Steven J. McCurdy

Title: Director

Amount Approved: _____

Date: _____

BUREAU OF RESOURCE PROTECTION

PERIODIC PAYMENT FORM

(Contractor's Request)

LOAN NO. : DMS PROJECT NO.: CONTRACT NO.:				DESCRIPTION OF CONTRACT / TASK:						
CONTRACTOR NAME & ADDRESS:										
REQUEST NO.: <u> 1 </u>										
PAYMENT PERIOD: From To										
CONSULTANT ENGINEER NAME & ADDRESS:				CONTRACT SERVICE DATES: From To						
EXPENDITURE TYPE				APPROVED COST \$	PREVIOUS REQUESTS % \$		THIS REQUEST \$	CUMMULATIVE REQUESTS % \$		REMAINING BALANCE \$
Construction	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -	\$ -	\$ -	
MBE/WBE Subcontractors										
Company A	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -	\$ -	\$ -	
Company B	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -	\$ -	\$ -	
<i>Total</i>	\$ -	#####	\$ -	\$0.00	####	\$ -	\$ -	\$ -	\$ -	

SAMPLE

<i>I certify that to the best of my belief and knowledge, (i) that the attached invoices are in accordance with the specifications of the approved project plans; and (ii) that all work in place as of this date are in accordance with the terms of the above referenced Construction Contract.</i>	BY THE CONTRACTOR		Certified by:		Date Signed	
			Type Name and Title:		Telephone	
	BY THE CONSULTING ENGINEER		Recommended by:		Date Signed	
			Type Name and Title:		Telephone	
	BY THE PROJECT INSPECTOR		THE WORK AS INVOICED HERE TO DATE APPEARS REASONABLE THE WORK AS INVOICED HERE TO DATE APPEARS REASONABLE		Date Signed	
		SIGNATURE		Telephone		
		PRINT NAME DEP/ BRP PROJECT INSPECTOR				

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RESOURCE PROTECTION

PAYMENT REQUISITION

(Consultant Engineer's Request and Certification)

LOAN NO. : _____ DMS PROJECT NO. : _____ CONTRACT No. _____	DESCRIPTION OF PROJECT: _____ _____ _____
LEGAL NAME OF BORROWER: _____ _____ _____	REQUEST No. <u> 1 </u> _____
CONSULTANT NAME & ADDRESS: _____ _____ _____	PAYMENT PERIOD: From To _____ CONTRACT SERVICE DATES: From To _____

EXPENDITURE TYPE	APPROVED COST \$	PREVIOUS REQUESTS		THIS REQUEST \$	CUMMULATIVE REQUESTS		REMAINING BALANCE \$
		%	\$		%	\$	
Technical Services	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
MBE/WBE Subcontractors							
Company A	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Company B	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Company C	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Totals	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -

The Borrower's Consultant Engineer identified herein certifies as follows: 1) the attached invoices and supporting documentation are for project costs for work actually performed or material or property actually supplied prior to the date of this requisition in conformity with the plans and specifications approved by the Department, or in the case of substantial deviations from the approved plans and specifications, the attached documentation demonstrates that all such deviations have been authorized and certified to by the Borrower or it's Consultant Engineer in accordance with M.G.L. c 30, ss39I and are project costs.

BY THE CONSULTING ENGINEER

Certified by: _____

Date Signed _____

Type Name and Title: _____

Telephone _____

Appendix J

0% Interest Rate Loans for Nutrient Removal Projects



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURPHY
Lieutenant Governor

RICHARD K. SULLIVAN, JR.
Secretary

KENNETH L. KIMMEL
Commissioner

MEMO

TO: Clean Water State Revolving Fund Borrowers and Consultants
From: Steve McCurdy, Director, MassDEP Municipal Services
DATE: January 17, 2012
Subject: Enhanced Loan Subsidy for Nutrient Management Projects

The Department announces the promulgation of regulations at 310 CMR 44, under which certain nutrient management projects financed through the Clean Water State Revolving Fund (CWSRF) program, may receive an enhanced state-financed subsidy on their interest rate. The regulations detail a program established by the Massachusetts Legislature pursuant to M.G.L. c. 29C, § 6. Qualified project will receive a zero percent (0%) interest rate on their loans. *The regulations and zero percent rate does not apply to the Drinking Water SRF program.*

The statute that provides for the zero percent interest rate is specifically restrictive, establishing thresholds that borrowers must meet to be eligible for the enhanced subsidy. Borrowers that are unable to meet the threshold will not receive the zero percent rates, though they will continue to qualify for the standard 2% CWSRF rate.

The Department has developed guidance for applicants seeking to qualify for these zero percent CWSRF loans. The guidance to applicants can be found at:

<http://www.mass.gov/dep/service/regulations/srfrate.pdf>. The guidance document details the information that borrowers must present to MassDEP, to demonstrate that their project qualifies for the zero percent rate.

CWSRF Projects identified on the 2102 Intended Use Plan (IUP) will be able to apply for the 0% rate with their loan application. Any determination on the interest rate for those projects will be made before the loan is permanently financed. Once those projects are permanently financed, there will be no opportunity to revisit the loans or refinance them at the lower rate.

CWSRF Projects on the 2009-2011 Intended Use Plans will be able to retroactively apply to the Department for the 0% rate. Applications for those loans will be reviewed by MassDEP on a first come, first served basis. Any Borrower from the 2009-2011 Clean Water IUPs seeking the zero percent rates must submit a completed request, not later than February 1, 2013.

DRAFT January 9, 2012

**INSTRUCTIONS REGARDING ZERO RATE OF INTEREST
OF CERTAIN *NUTRIENT MANAGEMENT PROJECTS* FINANCED UNDER THE
CLEAN WATER STATE REVOLVING FUND LOANS**

Introduction

In order to appropriately implement the Clean Water State Revolving Fund program, MassDEP seeks to finance projects that mitigate documented impacts to public health or the environment, and for which proponents have completed comprehensive planning and alternatives analysis. The Massachusetts Legislature has further directed MassDEP, pursuant to M.G.L. c. 29C, § 6, to provide zero percent interest financing to projects that meet the following criteria, as verified by the Department of Environmental Protection (MassDEP), are eligible for zero rate of interest State Revolving Fund (SRF) loans:

- (1) the project is primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply;
- (2) the applicant is not currently subject, due to a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a MassDEP enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order relative to the proposed project;
- (3) the applicant has a Comprehensive Wastewater Management Plan (CWMP) approved pursuant to regulations adopted by MassDEP;
- (4) the project has been deemed consistent with the regional water resources management plans if one exists;
- (5) the applicant has adopted land use controls, subject to the review and approval of MassDEP in consultation with the Department of Housing and Economic Development and, where applicable, any regional land use regulatory entity, intended to limit wastewater flows to the amount authorized under the land use controls that were in effect on the date the Secretary of the Executive Office of Energy and Environmental Affairs issued a certificate for the CWMP pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H, and the MEPA regulations at 301 CMR 11.00.

MassDEP expects that the thresholds established by the Legislature will limit the number of projects that qualify for the zero interest loans.

Instructions

Local government units seeking a zero rate of interest SRF financing for water pollution abatement projects must establish their eligibility by completing an SRF Application Addendum

using a form provided by MassDEP for such purposes. The Addendum must include the following:

- (1) If the applicant has a MassDEP approved CWMP, then the applicant should submit a copy of the MassDEP approval letter with the Addendum. If the applicant does not already have a MassDEP approved CWMP, evidenced by a DEP approval letter then the applicant should submit a copy of the applicant's CWMP with a copy of the certificate for the CWMP issued by the Secretary of the Executive Office of Energy and Environmental Affairs;
- (2) A narrative explanation establishing that the project is primarily intended to remediate or prevent nutrient enrichment of surface waters or water supply sources in order to meet a NPDES permit or an EPA-approved TMDL or to otherwise implement a nutrient management plan approved by MassDEP, including (a) specific reference to the applicant's CWMP or nutrient management plan approved by MassDEP, (b) a copy of any such plan, and (c) a detailed estimate of the project flows and costs primarily intended to remediate or prevent nutrient enrichment and the project flows and costs not associated with remediating or preventing nutrient enrichment;
- (3) A narrative explanation demonstrating that the applicant has established flow neutral land use controls¹ as provided in 314 CMR 44.04(3), including reference to the specific land use controls adopted to ensure such flow neutrality, and authenticated copies of such land use controls or sewer use regulation and all pertinent maps and overlays; this requirement applies to all users tributary to the wwtp regardless of what community the user may be located within;²
- (4) If the applicant is subject to a regional water resources management plan, then the applicant must submit a copy of such plan and a narrative explanation establishing that the applicant's project is consistent with such plan. The applicant shall submit a letter, certificate or other written determination from the regional planning agency deeming the project consistent with the regional water resources management plan if such a plan exists. If the applicant is not subject to a regional water resources management plan, then the applicant must certify as much; and
- (5) Certification that the applicant is not currently subject to a MassDEP enforcement order, administrative consent order or unilateral administrative order or enforcement action by the United States Environmental Protection Agency due a violation of a nutrient-related total maximum daily load standard or other nutrient based standard or otherwise subject to a state or federal court order relative to the proposed project.

121212121212_____

¹ Such land use controls include lawfully adopted bylaws, ordinances, and regulations.

² In the case of a zoning or general bylaw, the submitted bylaw shall have been reviewed and approved by the Massachusetts Attorney General as required by M.G.L. c. 40, § 32, or pursuant to Chapter 831 of the Act of 1977, as amended. In the case of any other land use controls, the city or town clerk must authenticate such copies.

Applicants shall submit a paper copy and compact disc containing a PDF file of the completed Addendum to MassDEP, DHED and, if applicable, the regional land use regulatory entity, as follows:

To MassDEP:

Steven McCurdy, Director
MassDEP Division of Municipal Services
One Winter Street - 5th floor
Boston, MA 02108

To DHED:

Elaine Wijnja, Principal Planner Department of Housing and Economic
Development
100 Cambridge Street - Suite 300
Boston, MA 02114

To the applicable regional land use regulatory entity:

at the address identified in Appendix 1 attached hereto.

Deadlines. Applicants must demonstrate that they meet the zero percent interest program thresholds, before their SRF loans are permanently financed. For projects proposed for the CWSRF program for 2013 and after, such applicants must submit a completed SRF Application Addendum at the time of submittal of a Loan Application Form.

Some projects that may qualify for the zero interest rate will have commenced before promulgation of the regulations. For those projects listed on the 2009-2011 Intended Use Plans, applicants must submit a completed SRF Application Addendum, not later than **February 1, 2013**. For projects for which the applicant has submitted a 2010 CWSRF Project Evaluation Form seeking listing on the 2012 Intended Use Plan, such applicants must submit a completed SRF Application Addendum before a loan application is submitted for the project.

Agency review. Within 60 days of its receipt of a complete SRF Application Addendum, MassDEP will consult with DHED and, if appropriate, the regional land use regulatory entity, to determine whether the applicant has adopted flow neutral land use controls in accordance with this Guidance. MassDEP will send a letter to the applicant within 14 days of such determination stating whether or not the Addendum establishes the applicant's eligibility for such financing and, if not, setting forth the basis for the determination. MassDEP's final eligibility determination is not subject to further administrative review. It is, therefore, essential that applicants make diligent efforts to fully complete their SRF Application Addendum and adequately document the basis for eligibility.

Capacity Limitation

The legislation limits the cost of loans available at 0% to thirty-five percent of the CWSRF IUP capacity in any given year. For example, a \$300M CWSRF IUP could finance up to \$105M at 0% interest. If eligible projects in excess of \$105M were to be proposed, MassDEP will afford the zero percent interest rate to projects in rank order as listed on the IUP. In that instance, highly ranked projects that are eligible would be financed at zero percent, while some lower ranked eligible project, might not. The low ranked projects would receive the standard 2% interest rate.

APPENDIX 1

Berkshire Regional Planning Commission

1 Fenn Street, Suite 201
Pittsfield, MA 01201-6629
Tel.: (413) 442-1521

Cape Cod Commission

3225 Main Street
Barnstable, MA 02630-1105
Tel. (508) 362-3828

Central Massachusetts Regional Planning Commission

2 Washington Square – 2d Floor
Worcester, MA 01604-4016
Tel. (508) 756-7717

Franklin Regional Council of Governments

425 Main Street - Ste 20
Greenfield, MA 01301-3443
Tel. (413) 774-3167

Martha's Vineyard Commission

The Stone Building
33 New York Avenue
P.O. Box 1447
Oak Bluffs MA 02557
Tel. 508-693-3453

Merrimack Valley Planning Commission

160 Main Street
Haverhill, MA 01830
Tel. 978-374-0519

Metropolitan Area Planning Council

60 Temple Place
Boston, MA 02111-1379
Tel. (617) 451-2770

Montachusett Regional Planning Commission

1427 Water Street
Fitchburg, MA 01420-7266
Tel. (978) 345-7376

Nantucket Planning and Economic Development Commission

2 Fairgrounds Rd.

Nantucket, MA 02554

Tel. (508) 228-7237

Northern Middlesex Council of Governments

40 Church Street - Unit 2,

Lowell, MA 01852-2686

Tel. (978) 454-8021

Old Colony Planning Council

70 School Street

Brocton, MA 02301

Tel. (508) 583-1833

Pioneer Valley Planning Commission

136 Damon Road

Northampton, MA 01060-1818

Tel. (413) 584-4937

Southeastern Regional Planning and Economic Development District

88 Broadway

Taunton, MA 02780

Tel. (508) 824-1367

CLEAN WATER STATE REVOLVING FUND (CWSRF) - ZERO PERCENT INTEREST RATE LOANS

Questions and Answers

What is the Clean Water State Revolving Fund (CWSRF)?

The CWSRF is a federal-state financing mechanism that subsidizes water quality improvement projects that are undertaken by local governments. Many cities and towns in Massachusetts have used CWSRF to finance wastewater management planning since the program began in 1991. CWSRF loans have a standard term of twenty years and an interest rate of 2%.

How does a community access CWSRF financing?

The CWSRF is administered by MassDEP, which conducts an annual project solicitation each summer. The solicitation is a competitive process under which the Department receives project proposals, identifies the most critical projects in terms of environmental and public health and ranks the proposals accordingly.

Which CWSRF projects are eligible for the zero percent interest rate?

The statute that provided the zero interest rate included five specific criteria that a community must meet in order to be eligible for the zero percent rate. The criteria are:

- 1) The project is primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply;
- (2) the applicant is not currently subject, due a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a department of environmental protection enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order relative to the proposed project;
- (3) the applicant has a Comprehensive Wastewater Management Plan approved pursuant to regulations adopted by the Department of Environmental Protection;
- (4) The project has been deemed consistent with the regional water resources management plans if one exists;
- (5) the applicant has adopted land use controls, subject to the review and approval of the department of environmental protection in consultation with the department of housing and economic development and, where applicable any regional land use regulatory entity, intended to limit wastewater flows to the amount authorized under zoning and wastewater regulations as of the date of the approval of the CWMP.

Why were nutrient management projects selected for special consideration?

Nutrient management projects are a relatively new development. The Clean Water Act has been successful in helping to restore the nations' waters, with unchecked addition of residential and industrial waste to our waterways largely a thing of the past. Despite the billions of dollars invested in the wastewater infrastructure, water quality continues to be impacted by excessive nutrients , including algae blooms, fish mortality and loss of habitat. Enhanced treatment technology, which brings the nutrients down to a level that is sustainable for the water body, is a very expensive undertaking.

Why aren't all CWSRF loans financed at zero percent?

The Commonwealth provides the funds for subsidizing loans from market rate to 2 % and the additional subsidy down to zero percent will be absorbed by the Commonwealth. It is not within the Commonwealth's financial ability or plans to subsidize all the CWSRF loans to zero percent.

Are all nutrient management projects eligible for zero percent loans?

No. The Legislative intent of the statute which provides 0% CWSRF loans for nutrient management projects was that the financing be exclusive, rather than inclusive. Not all nutrient management projects will qualify for the zero interest loans. Only those projects that meet the five criteria noted above will be eligible. MassDEP cannot amend the statute, or re-engineer the legislative intent, and is therefore aware that there are projects that will be ineligible for access to zero interest financing.

If a project meets the five statutory criteria, is it guaranteed a zero percent interest rate?

No, it is not. The statute limits the volume of zero interest loans to 35% of the IUP total in any given year. If the cost of the qualifying loans for nutrient projects exceeds 35% of the IUP cost, the Department will finance in rank order according to the ranking order on the Priority List. Some lower-ranked, but programmatically eligible proposals may therefore be unable to receive zero percent interest. They will be offered standard two percent loans.

Are there any other limitations?

The zero interest rate program is time-limited. The statute allows qualifying projects on the 2009-2019 Intended Use Plans to qualify for zero percent interest. Because of the timing of the regulations, the Department will retroactively re-finance some of project loans down to zero percent. Any project on an IUP published after the zero-interest rate regulations are promulgated will have to meet all of the provisions of the statute by the closing of the project loan to qualify for the zero percent interest rate. The Department will not re-finance loans for proponents who retroactively meet the standards in place for zero interest loans.

How does the Department plan to interpret the five statutory criteria?

The Department has consulted with the Legislature and has accepted public comment related to the zero percent interest program regulations. The outcome of those consultations is the following set of interpretations.

- (1) *The project is primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply.*

The project must address a nutrient management problem that is identified within a community's Comprehensive Wastewater Management Plan (CWMP) **and** the cost of the nutrient management approach must comprise a majority of the cost of the project.

- (2) *The applicant is not currently subject, due a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a department of environmental protection enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order relative to the proposed project.*

The intent of this provision was that the community act to address its nutrient management problems without having been compelled to do so by an enforcement action by the federal or state government. Often, a negotiated consent order is used to set a project on a schedule and those orders will not automatically render an applicant ineligible for zero interest. However, if the proponent slips the enforcement schedule, and has further action taken against it by the federal or state regulatory authority, then the project will not be eligible for zero interest. However, the project could still receive the standard two percent interest loan.

- (3) *The applicant has a Comprehensive Wastewater Management Plan approved pursuant to regulations adopted by the Department of Environmental Protection.*

The municipality must have a state-approved Comprehensive Wastewater Management Plan to qualify for a zero percent interest rate. The CWMP is the single most important document to establish the eligibility of the project. The CWMP will describe how the project fits in as a nutrient management strategy within the proponent's overall wastewater management plan. CWMPs also describe the local wastewater needs areas and potential wastewater flow regime under current zoning. CWMPs will outline non-traditional and traditional approaches to wastewater management and allow communities to select the proposals that best address their particular watershed's characteristics and plans. Finally, CWMPs will discuss regional options for the management of wastewater and nutrients.

- (4) *The project has been deemed consistent with the regional water resources management plans if one exists.*

Presently, MassDEP is not aware of any existing current regional water resources management plans. However, there is at least one such plan under development which is intended to encourage watershed-based planning that recognizes natural and not political boundaries. Any project proponent that opts not to follow regional water resources management plan recommendations will be ineligible for the zero percent interest rate. However, that project may still be eligible for a standard 2% loan, as the statute does not prohibit the project from receiving the standard financing.

- (5) *The applicant has adopted land use controls, subject to the review and approval of the department of environmental protection in consultation with the department of housing and economic development and, where applicable any regional land use regulatory entity, intended to limit wastewater flows to the amount authorized under zoning and wastewater regulations as of the date of the approval of the CWMP.*

The development of wastewater service normally has a beneficial impact on public health and the environment. However, there has also been some history of indiscriminate growth or sprawl associated with wastewater service in the past. The statute was crafted carefully to insure that the zero interest rate loans do not encourage sprawl. While communities will be required to demonstrate that they have planned their flow allocations, the decisions on how the allocations will be made are solely within each municipality's discretion.

The total volume of septic flow in a municipality is limited by the land use zoning and soil conditions. The existence of a sewer connection to a property can obviate those limits because a sewer is not limited by soil condition, lot size or the presence of high groundwater or wetland boundaries. The idea of flow neutrality is, generally speaking, that wastewater systems should not create a massive increase in capacity above what is possible under the existing land use controls and natural site limitations and Title 5 of the Massachusetts sanitary code's limit of 110 gallons per day per bedroom. Municipalities may use that number to calculate the maximum flow of underdeveloped properties. (Watershed Benchmark Flow???) Alternatively, they may use existing water meter data from their own, or similarly sized communities, to develop a lesser calculation for the existing wastewater facility total flow amount in a planning area, including flow amounts from on-site subsurface disposal systems, collection systems, and wastewater treatment plants, as set forth in a local governmental unit's Department-approved Comprehensive Water Resource Management Plan.

Regional wastewater districts will be largely unable to qualify for the zero percent interest rate, unless they can demonstrate that they have the authority to implement land use controls related to flow neutrality. MassDEP understands that it is unlikely that any regional authority has such authority.

Can the Department provide model by-laws that demonstrate flow-neutrality?

Presently, there are not any model by-laws that have been certified by DHCD as adequate to protect growth neutrality. However, as the agencies process requests for zero interest rate, examples will be added to this Q&A guidance.

Does MassDEP maintain a list or database of communities that have prepared and completed qualifying plans? Is there is a statute of limitations (for lack of a better term) regarding how current that plan must be?

MassDEP does not have a full inventory of CWMPs, though will attempt to assemble one as received them from applicants. The age of the CWMP is not important, but the content is. If the plan does not describe a Nutrient problem and provide a recommended solution, that plan will not satisfy the requirement.

Where can I get additional information regarding the zero percent interest loan program?

Contact Steve McCurdy at the Division of Municipal Services at MassDEP 617-292-5779

steven.mccurdy@state.ma.us

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